

REMARKS

Status of the Claims

Further to the Decision on Appeal mailed December 3, 2010, claims 1, 7, 9, 13, and 17 have been amended, and claims 8 and 18-20 have been canceled. Claims 1-7 and 9-17 remain pending in the application. Applicants respectfully submit that no new matter has been added.

At the outset, the arguments included in the Appellants' Brief filed March 28, 2007 are incorporated in this response, and it is submitted that the enclosed amendments and Remarks further address the Examiner's Answer mailed May 21, 2007 and the Decision on Appeal filed December 3, 2010.

In the Decision on Appeal, the Board of Patent Appeals and Interferences overturned the Examiner's rejection of claims 1, 9, 13, and 17 under 35 U.S.C. § 112. However, the Board of Patent Appeals and Interferences sustained the Examiner's rejection of claims 1-20 under 35 U.S.C. § 103(a) as being unpatentable over Roach (U.S. Patent No. 6,580,367) in view of Frese et al. (U.S. Patent No. 6,472,771, hereinafter "Frese"). Applicants respectfully traverse the rejection under § 103(a).

Claim Rejection Under 35 U.S.C. § 103

The Board of Patent Appeals and Interferences sustained the Examiner's rejection of claims 1-20 under 35 U.S.C. § 103(a) as being unpatentable over Roach in view of Frese. Applicants respectively traverse the rejection because the combination of Roach and Frese fails to teach or suggest each and every element of the claims. Further, the Examiner provides no articulated reasoning with some rational underpinning to combine Frese with Roach to produce the claimed invention.

Claim 1 recites a method for providing a hazardous material alert for use with a vehicle that is transporting hazardous material comprising, *inter alia*, “receiving a reply transmission at the vehicle in response to transmitting the hazardous material alert, wherein the reply transmission comprises instructions for controlling a system of the vehicle.” Claims 9, 13, and 17 recite similar elements. Applicants respectfully submit that Roach fails to disclose or suggest each and every element of claims 1, 9, and 13.

Roach describes a method for notifying emergency personnel as to the location and contents of a vehicle (see Abstract). In particular, Roach discloses an information dispatch device 28 of a vehicle 22 that stores information concerning the vehicle 22 itself, the load being hauled by the vehicle 22, and information on handling emergency situations concerning the vehicle 22 and the load (see column 6, lines 55-64). When an emergency is detected, an information dispatch system 20 of the vehicle 22 transmits the information of the information dispatch device 28 to a command control center 24 (see column 7, lines 10-14). However, the functionality of Roach is not comparable to the functionality of claims 1, 9, and 13 because Roach does not disclose that the vehicle 22 receives a reply transmission in response to transmitting the information, let alone a reply transmission comprising instructions for controlling a system of the vehicle.

Instead, Roach merely discloses that an operator of the command control center 24 analyzes the information received from the vehicle 22, and contacts an appropriate emergency personnel to handle the situation (see column 8, lines 45-55). Further, the operator provides instruction and information to the emergency personnel so that the emergency can be handled (see *Id.*). On page 6 of the Examiner’s Answer, the Examiner asserts that a notification of the hazard to the emergency personnel of Roach is a reply transmission in response to the hazard

alert. However, instead of the notification being received **at the vehicle**, as recited in claims 1, 9, 13, and 17, the notification is received by the emergency personnel. As such, a vehicle operator or other entity at the vehicle 22 of Roach would need to wait for the emergency personnel to arrive with any instructions from the command control center 24. Therefore, Roach fails to disclose or suggest “receiving a reply transmission at the vehicle in response to transmitting the hazardous material alert, wherein the reply transmission comprises instructions for controlling a system of the vehicle,” as recited in claims 1, 9, 13 and 17. Frese, either alone or in combination with Roach, fails to correct this deficiency.

Frese describes a vehicle electronics system of a motor vehicle (see Abstract). In particular, the vehicle electronics system includes various control units such as a mobile radio communication unit and a communications device for vehicle-vehicle or vehicle-infrastructure communications (see column 2, lines 56-64). However, in no way does Frese relate to a hazardous material alert, let alone receiving a reply transmission at the vehicle in response to transmitting a hazardous material alert. As such, Frese also fails to disclose or suggest “receiving a reply transmission at the vehicle in response to transmitting the hazardous material alert, wherein the reply transmission comprises instructions for controlling a system of the vehicle,” as recited in claims 1, 9, 13 and 17. Therefore, the combination of Roach and Frese fails to disclose or suggest each and every claim element of claims 1, 9, 13 and 17.

Further, the Examiner, in the Examiner’s Answer, provides no articulated reasoning with some rational underpinning to combine Frese with Roach to produce the claimed invention. Instead, the Examiner merely indicates that it would be obvious to combine the teachings of Frese with that of Roach for the purpose of communicating information directly to an intended target rather than having it relayed through an intermediate party (see page 5). However, the

Examiner fails to account for the fact that neither Roach nor Frese discloses or suggest a reply transmission received at the vehicle in response to transmitting the hazardous material alert. Therefore, the combination of Roach and Frese fails to render claims 1, 9, 13 and 17 obvious.

As such, the rejection of claims 1, 9, 13 and 17 under 35 USC §103(a) is improper and should be withdrawn. Further, claims 2-7, 10-12, and 14-16 depend from either claims 1, 9, 13 or 17. Therefore, the rejection of these claims should be withdrawn for at least the reasons mentioned above.

CONCLUSION

In light of the amendments contained herein, Applicants submit that the application is in condition for allowance, for which early action is requested.

Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026.

Respectfully submitted,

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